

the claims of the application "if allowed, would improperly extend the "right to exclude" already granted in the patent".

The applicant disagrees with the Examiner's position for the following reasons. The Examiner states that the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter. The Examiner acknowledges that the claims of the application differ from those of the patent in that the application claims require that the upper surfaces of the wedge shoe members are tapered at an angle of 49-50° as opposed to 46.5-48.5°, which was claimed in U.S. Patent No. 5,590,797. It is the Examiner's position that it would have been obvious to "adjust the components slightly for fine-tuning of the device".

The Examiner also acknowledges that the claims of the application differ from those of the patent in that the application claims require the use of a metal lubricant containing at least 2% graphite whereas the claims of U.S. Patent No. 5,590,797 required the used of a metal lubricant such as brass or brass alloys. It is the Examiner's position the it would have been obvious to one of ordinary skill in the art to "understand that since the prior art recited a preselected metal

lubricant it is broader than the instant claims and therefore would encompass a metal lubricant with graphite".

Claims 1-21 are also rejected under 35 USC 103(a) as being obvious over the teachings of Duffy et al (5,590,797). It is the Examiner's position that since the change in angle is minimal, it would have been obvious to one of ordinary skill in the art to adjust the components slightly for fine-tuning of the device. The Examiner also states that it would have been obvious to one having ordinary skill in the art to understand that since the prior art recites a pre-selected metal lubricant, this limitation is broader than the instant claims and therefore would encompass a metal lubricant with graphite.

The Examiner's attention is directed to the background portion of the specification at pages 4-5 wherein U.S. Patent No. 5,590,797 is discussed in detail. While it was found that the ('797) design resulted in an improved friction clutch draft gear assembly than those previously in use, it was determined that this particular design did not satisfy the requirements as defined in AAR Specification M-901-G. It was determined during testing of Super Mark 50's, with rusted friction packs, assembled with H-911 brass inserts, that the units tested had reaction force spikes higher than 500K. This resulted in hammer capacities of less than 36,000 ft/lbs. When tested on the test

track, the same super Mark 50 reached the 500K reaction force levels well before the 5-MPH requirement for a G specification draft gear. It was determined through extensive testing and evaluation that slightly increasing the center wedge shoe angle increases the clamping force on the friction pack. It was further determined that applying inserts containing 2% graphite reduces unwanted reaction force spikes. The combination of these modifications increases the overall performance of the draft gear without adversely affecting its operation and meets the requirements as defined by AAR Specification M-901-G. Thus, while it might seem "obvious" to the Examiner to "fine-tune" the draft gear disclosed in the U.S. Patent No. 5,590,797 such was not obvious to the inventors of this patent. An angle range of 46.5-48.5 is recited in the patent. If one having ordinary skill in the art were simply "fine-tuning" their draft gear, then he/she would be motivated to "fine-tune" within this range. There is no suggestion within the patent that would suggest one to "fine-tune" outside of the range suggested in the ('797) patent. With respect to the claimed limitation of inserts containing 2% graphite, the Examiner's basis for determining obviousness in that the disclosure of metal inserts within the ('797) patent is "broader" than the particularly claimed 2% graphite inserts would "encompass" the claims of the present

invention is not a valid test of obviousness. The claims of the present invention, which require inserts containing 2% graphite, are narrower and more specific than those of the ('797) patent. The burden of proof is on the Examiner to show that the use of the more specifically claimed inserts is obvious. The Examiner has failed to render the claims of the present application obvious.

For the reasons set forth above, it is respectfully requested that the rejection of claims 1-21 under the judicially created doctrine of double patenting over claims 1, 3, 5, 7-10 and 12 of U.S. Patent No. 5,590,797 be withdrawn. It is also requested that the rejection of claims 1-21 under 35 USC 103(a) over the teachings of Duffy et al (5,590,797) be withdrawn, as this patent fails to render claims 1-21 obvious.

CONCLUSION

In view of the foregoing arguments and amendments, Applicant believes that the application meets all applicable statutory and regulatory requirements. Accordingly, Applicant respectfully requests allowance of all claims remaining in the application.

If the Examiner has any questions regarding this amendment and/or believes that a telephone interview would assist in the

advancement of this case to allowance, he/she is invited to
contact the undersigned Agent for Applicant.

Respectfully submitted,

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